IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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FAO NO. 1737 OF 2005.
DATE OF DECISION: September 18, 2007.

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Dalpat Singh son of Ganga Singh, partner of Shree Bikaner Misthan Bhandar, near Myna Complex, Delhi, District Rohtak.

Versus

1. The Regional Director, Employee's State Insurance Corporation, Regional Office, Faridabad (Haryana);

2. The E.S.I.Inspector, Rohtak.

3. The Manager, Local Office, E.S.I.Corporation, Rohtak.

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri Sandeep Sharma, Advocate, for the appellant.

Shri Vikas Suri, Advocate, for the respondents.

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R.S.Madan, J

Here in this appeal the question posed for the determination of this Court, is whether an establishment engaged in preparing and sale of Sweets can be termed, as Factory as provided in Section 2(12) of the Employees State Insurance Act, 1948, (hereinafter for brevity to be referred to as the “Act”).

The brief facts, which emerges from the instant appeal, are that respondent No.1 issued a letter bearing No. 13/11188/09 dated October 20, 1998 in the name of Sher Singh informing that the shop of the appellant was covered under the provisions of Section 2(12) of the Act on the basis of information and inspection of the premises conducted by the representative of respondent No.1 on August 24, 1998. Pursuant to the letter, the appellant filed a representation on 24.12.1998 with the

respondent alleging therein that the shop of the appellant was not covered under the Act and that Sher Singh, in whose name the letter dated October 20, 1998 has been issued was neither the employer nor Manager of the shop in dispute. However, it is alleged that the shop was never inspected by any person in his presence and the signatures of one Sher Singh, were obtained, as a token of inspection. The appellant has thus prayed for quashing the decision of the respondents whereby the shop of the appellant was declared to be covered under Section 2(12) of the ESI Act. The appellant has further prayed that the proceedings initiated by the respondents for the recovery of contribution towards the E.S.I. be also set aside.

Upon notice of the application under Section 75 of the Act, the respondents filed joint reply controverted the averments made in the application and reiterated their stand that the case of the appellant is covered by Section 2(12) of the Act.

From the pleadings of the parties, the learned trial court framed the following issues:-

1) Whether the business of the applicant is not covered under the provisions of the ESI Act and the allotment of the code to the applicant is illegal and is liable to be set aside, as alleged in the petition? OPA.

2) Whether the applicant has no locus standi to file the present petition, as alleged? OPR.

3) Whether the petition is not maintainable in the present form? OPR.

4) Whether the application has not come with clean hands and has suppressed the material facts, as alleged? OPR.

5) Relief.

Both the parties in order to settle the dispute, adduced their evidence and place on the record documentary proof in support of their respective claims.

After hearing the learned counsel for the parties and perusing the evidence brought on the record, the learned trial court returned the findings on all the issues against the applicant-appellant and vide order dated February 04, 2005 dismissed the petition with costs.

Feeling dis-satisfied with the order dated February 04, 2005, the present appeal has been filed by the appellant before this Court.

I have heard the learned counsel for the parties and have perused the record.

The learned counsel for the appellant has submitted that the premises in dispute was never inspected and the person named as Sher Singh, was neither employer nor Manager of the shop in dispute. He further submitted that the appellant deals in preparing and sale of Sweets and that for that purpose he has engaged 6 servants. The learned counsel further submitted that the process of preserving or storing the Sweets in the refrigerator, would not cover the shop in question under the E.S.I. Act.

In support of his contentions the learned counsel for the appellants placed reliance on *Ritz Hotel (Vegetarian), Pune Versus E.S.I.C.Pune, 1995 (70) 613.* He drew my attention to the observations in the above cited authority and stated that merely because refrigerator is used with the aid of power, it does not follow that a manufacturing process is carried on in the establishment with the aid of power and the hotel or restaurant amounts to a factory. In this case it was held by the Court that mere storage of articles in refrigerator will not be part of the manufacturing process as defined by Section 2(k) of the Factories Act as it then stood.

The next contention of the learned counsel for the appellants is that at the time of alleged inspection by the Inspector, there were not more than 6 employees working at the shop in question but the Inspector in his inspection note has recorded the names of ten employees without describing their parentage and addresses. Therefore, this type of

document could be prepared any time by the respondents. Hence, no reliance can be placed on the Inspection note.

On the other hand, the learned counsel for the respondent controverting the submission of the learned counsel for the appellant, it was submitted by the learned counsel for the respondents that at the time of inspection by the Inspecting staff, there were 10 persons engaged in preparing the sweets and Sher Singh, in whose presence the premises was inspected, at that time was selling the Sweets on the counter to various customers. He further contended that an employee includes even a casual employee employed for a day. Though, according to sub-section (3) of Section 39, a week is taken as the unit for payment of contribution and it becomes payable the moment a person is employed even for a day in a week. Sub-section (4) of Section 39 also gives clearest indication that casual employees are also covered by the provisions of the Act.

The learned counsel for the respondent further placed reliance on ***Uttaranchal Forest Development Corporation and another*** Versus ***Jabar Singh and others, 2007(2) S.C.T. 458*** wherein their Lordships of the Honb'ble Supreme Court observed as under:-

> **A. Factories Act, 1948, Section 2(k) - Manufacturing process - Cutting of trees by axe and changing the shape of the timber into logs by using hand driven saw for sale, disposal or use, both squarely fall within the definition of first part of the manufacturing process as cutting would be included in the process of "making" and "breaking up" - The changing of shape by saw would be the process of "altering" and "adapting" - Trees and logs fall with the meaning of "any article or substance".**

The case law cited by the counsel for the respondents are fully applicable to the facts of the case.

From the perusal of the evidence and the documents brought on the record by the appellant, it is nowhere the case of the appellant that how Shri Sher Singh, whose signatures were obtained at the time of

inspection by the Inspector, was manning the counter and was selling the products, without any authority from the immediate employer or the Manager of the shop, under whose directions and guidance, the affairs of the shop, were carried out.

The learned counsel for the respondent further submitted that preparation of food in the kitchen attached to a hotel done with the aid of power necessarily involves “manufacturing process” within the meaning of that expression assigned to it in the Factories Act. Articles of food undergo a change as a result of some operation performed on them or with regard to it and all such transformation is nothing but a process for adapting or treating them with a view to their use or sale within the meaning of “Manufacturing process” in Section 2(k) of the Act. He further submitted that power was used for the purposes of manufacturing various “Sweets”- the case squarely falls within clause (i) of the notification, though restaurants normally covered by clause (iii). In support of his contention he placed reliance on ***Employees' State Insurance Corporation and Jodhpur Coffee House, (1988) 57 Fac. L.R. 379.***

“Manufacturing Process” is of very wide amplitude encompassing in its ambit, variety of activities and intended to meet diverse situations. It is not always necessary or essential that a new product or article or substances would emerge from the manufacturing process. If power is used as aid in any process of manufacturing of an article or substance for finishing or ornamentation, it becomes an integral part of the manufacturing process. Therefore, though power is not used to stitch cloth or garments yet after stitching clothes are ironed with aid of power, it becomes integral part of manufacturing process though no new product has emerged.

Now reverting back to the question of meaning of Factory, it is well settled principle of law that so long the efforts of all the departments

are co-ordinated to achieve the main object of the factory, that is, manufacturing, the decision whether a particular place is a factory or not would depend largely on the question whether those activities are carried on within the premises of the factory. The premises need not be a single building. A number of buildings when situate within one compound may constitute a factory. Unless it is possible to say that the different units are a part of the same premises the entire area cannot be regarded as a factory.

Section 2, Clause (12) of the Employees State Insurance Act, 1948 and Section 2(k) of the Factories Act, 1948 deals with the question of "Factory". In *Cricket Club of India Limited and others And ESIC and another, 1993 I.L.L.J. 642,* the Bombay High Court while dealing with the question observed as under:-

> ***"So far as the applicability of the Employees State Insurance Act, 1948 is concerned, the profit-making motive is not relevant. Supply of food and beverages by the Club amounts to sale to its members and their guests. This activity is covered by the definition of "manufacturing process" as found in Section 2(k) of the Factories Act, 1948. It is not disputed that Club has employed ten or more persons in its premises. In the premises a "manufacturing process" is being carried on viz. The preparation of food and beverages for its use and sale to the members and their guests. Hence, it satisfies the definition of the term "factory" under Section 2(12) and is, therefore, by virtue of Section 1(4), covered by the ESI Act".***

Thus, when scanned from all the four corners, I am of the view that the learned trial court was right in negating the question raised by the appellant.

As a result, the appeal being devoid of merit, is hereby dismissed, leaving the parties to bear their own costs.

September 18, 2007. **(R.S.Madan)**
Malik **Judge**